

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON

LARRY L. EALY,

Plaintiff,

Case No. 3:16-cv-156

vs.

COMMISSIONER OF SOCIAL SECURITY,

District Judge Thomas M. Rose
Magistrate Judge Michael J. Newman

Defendant.

ORDER AND ENTRY: (1) VACATING THE NOTATION ORDER DATED APRIL 22, 2016 GRANTING PLAINTIFF'S MOTION TO PROCEED *IN FORMA PAUPERIS*; AND (2) ORDERING *PRO SE* PLAINTIFF TO SHOW CAUSE AS TO WHY THE COMPLAINT SHOULD NOT BE DISMISSED WITH PREJUDICE AND WHY HE SHOULD NOT BE HELD IN CONTEMPT

REPORT AND RECOMMENDATION¹ THAT: (1) *PRO SE* PLAINTIFF'S MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS* (DOC. 1) BE DENIED; AND (2) *PRO SE* PLAINTIFF BE ORDERED TO PAY THE REQUIRED FILING FEE WITHIN 14 DAYS

This civil case is before the Court on *pro se* Plaintiff's motion for leave to proceed *in forma pauperis* ("IFP"). Doc. 1. Plaintiff's motion to proceed IFP was granted by Notation Order on April 22, 2016. However, because of *pro se* Plaintiff's history of repeated frivolous filings, Judge Dlott issued an Order on April 24, 2009 permanently enjoining Plaintiff "from proceeding [IFP] in any future action filed in this Court and from filing any new complaint, removal petition, habeas corpus petition, and/or other action without prior approval of the Court." *Ohio v. Ealy*, No. 1:09-CV-245, 2009 WL 1118704, at *5 (S.D. Ohio Apr. 24, 2009). Judge Dlott further ordered that:

¹ Attached hereto is a NOTICE to the parties regarding objections to this Report and Recommendation.

[Plaintiff] attach a copy of [the Injunction Order], the Court's accompanying judgment, and proof of payment of the entire filing fee of \$350.00 to any proposed future complaint, removal petition, habeas corpus petition, and/or other action to be filed in the Southern District of Ohio, accompanied by a motion for leave to file a new complaint, removal petition, habeas corpus petition, and/or other action in the Southern District of Ohio.

...

[Plaintiff's] failure to comply with the terms of the Court's injunction shall be sufficient grounds to dismiss a future complaint in this Court with prejudice and/or grounds for contempt proceedings.

Id. at *6.

In accordance with the terms of the permanent injunction issued by Judge Dlott, the undersigned **VACATES** the April 22nd Notation Order granting *pro se* Plaintiff's motion to proceed IFP and **RECOMMENDS** instead that such motion (doc.1) be **DENIED**. The undersigned further **RECOMMENDS** that -- should this recommendation be adopted by Judge Rose -- *pro se* Plaintiff be **ORDERED** to pay the required civil filing fee within 14 days from Judge Rose's order denying the IFP motion. Failure to pay the required filing fee will result in a recommendation that this case be dismissed for failure to prosecute.

In addition to the foregoing, the undersigned **ORDERS** *pro se* Plaintiff to **SHOW CAUSE**, in writing and within 14 days, as to why this action should not be dismissed with prejudice and why he should not be held in contempt for failure to comply with the terms of the permanent injunction issued by Judge Dlott. *See Ealy*, 2009 WL 1118704, at *5-6.

Date: April 22, 2016

s/ Michael J. Newman
Michael J. Newman
United States Magistrate Judge

NOTICE REGARDING OBJECTIONS

Pursuant to Fed. R. Civ. P. 72(b), any party may serve and file specific, written objections to the proposed findings and recommendations within **FOURTEEN** days after being served with this Report and Recommendation. Pursuant to Fed. R. Civ. P. 6(d), this period is extended to **SEVENTEEN** days because this Report and Recommendation is being served by one of the methods of service listed in Fed. R. Civ. P. 5(b)(2)(C), (D), (E), or (F), and may be extended further by the Court on timely motion for an extension. Such objections shall specify the portions of the Report and Recommendation objected to, and shall be accompanied by a memorandum of law in support of the objections. If the Report and Recommendation is based in whole or in part upon matters occurring of record at an oral hearing, the objecting party shall promptly arrange for the transcription of the record, or such portions of it as all parties may agree upon or the Magistrate Judge deems sufficient, unless the assigned District Judge otherwise directs. A party may respond to another party's objections within **FOURTEEN** days after being served with a copy thereof. As is made clear above, this period is likewise extended to **SEVENTEEN** days if service of the objections is made pursuant to Fed. R. Civ. P. 5(b)(2)(C), (D), (E), or (F). Failure to make objections in accordance with this procedure may forfeit rights on appeal. *See Thomas v. Arn*, 474 U.S. 140, 153-55 (1985); *United States v. Walters*, 638 F.2d 947, 949-50 (6th Cir. 1981).